

OD-3

ORDER SHEET

WPO No. 1042 of 2021

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SAMAR KUMAR SAHA
Versus
THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 8th October, 2021.

[Via Video Conference]

Appearance:
Mr. Somnath Gangopadhyay, Adv.
Mr. Rahul Singh, Adv.
For the petitioner.

Mr. Alok Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
For K.M.C.

Ms. Anjusri Mukherjee, Adv.
For the respondent no.7.

The Court :- The order impugned in the writ petition is an order of demolition passed by the Executive Engineer (Civil/Building) Borough-I of the Kolkata Municipal Corporation. By an order dated September 28, 2021, the person responsible was given five days to demolish the unauthorized construction failing which, the Corporation retained the right to implement the order of demolition.

The order impugned is an appealable order. The person responsible has not been given time to avail the statutory remedy of an

appeal, but instead the Corporation has sought to implement the order even before the person responsible got a chance to exhaust such remedy.

The writ petition is disposed of with liberty to the person responsible and/or the petitioner to prefer an appeal in accordance with law. The maintainability of the appeal including point of locus shall be decided by the Appellate Tribunal. The parties will be at liberty to pray for an interim order of stay of demolition, which shall be decided in accordance with law. The order of demolition shall remain stayed for a period of eight weeks. If any protective order is not passed by the Appellate Tribunal within eight weeks from date, the Corporation shall proceed in accordance with law. The appeal may be filed with the photocopy of the order with an undertaking before the Tribunal for furnishing the certified copy of the order as and when the same would be supplied by the Corporation.

This Court has not gone into the merits of the claims and counter claims of the parties. This order will not be construed as an opinion of this Court with regard to the right of the owners to prefer the appeal. All points including point of locus shall be decided by the Appellate Forum.

(SHAMPA SARKAR, J)